A

# Tetuan Manjit & Co v Khor Ooi Tit (seorang pesakit dan pendakwaan ini dibuat oleh isterinya dan wakil litigasi, Nguyen Thi My Hang)

B

MAHKAMAH TINGGI (PULAU PINANG) — RAYUAN SIVIL NO PA-12A-38–09 TAHUN 2022
AZIZAN ARSHAD PK
30 JANUARI 2023

C

*Prosedur Sivil — Rayuan — Rayuan kepada Mahkamah Tinggi — Perayu menuntut jumlah RM40,000 sebagai 'getting up fees' — Mahkamah rendah membenarkan RM10,000 sahaja sebagai 'getting up fees' — Perayu memfailkan*
D *rayuan — Sama ada 'getting up fees' merupakan kos dan tidak boleh dirayu — Sama ada s 28 Akta Mahkamah Kehakiman 1964 terpakai — Sama ada jumlah RM10,000 yang dinyatakan dalam s 28 Akta Mahkamah Kehakiman 1964 adalah jumlah tuntutan atau jumlah penghakiman — Sama ada rayuan perayu harus dibatalkan — Akta Mahkamah Kehakiman 1964 s 28*

E

Hakim mahkamah sesyen ('HMS') telah membenarkan kandungan 29 iaitu bil kos yang difailkan oleh perayu (sebuah firma guaman) untuk menaksirkan kos atas dasar peguam dan anak guam. Hakim mahkamah sesyen telah membenarkan sebanyak RM10,000 daripada jumlah RM40,000 yang
F dipohon oleh perayu sebagai 'getting up fees'. Perayu telah merayu kepada Mahkamah Tinggi terhadap keputusan HMS. Responden telah membangkitkan bantahan awal berikut terhadap rayuan perayu: (a) sama ada 'getting up fees' merupakan kos dan tidak boleh dirayu; dan (b) sama ada s 28 Akta Mahkamah Kehakiman 1964 ('AMK') terpakai. Berkaitan dengan
G bantahan awal yang kedua, responden berhujah bahawa rayuan ini wajar dibatalkan kerana jumlah penghakiman adalah RM10,000 sahaja dan rayuan hanya dibenarkan sekiranya terdapat persoalan undang-undang. Responden juga menyatakan bahawa notis rayuan adalah cacat kerana tiada persoalan
H undang-undang-undang dinyatakan oleh perayu.

**Diputuskan**, membenarkan bantahan awal responden dan membatalkan rayuan perayu tanpa perintah atas kos:

I (1) Berbeza dengan s 28 AMK, s 68 AMK secara terang-terangan menyatakan 'kos', sekiranya hendak dirayu mestilah mendapat kebenaran daripada Mahkamah Rayuan. Namun dalam kes ini jumlah penghakiman yang dirayu adalah 'getting up fees' kepada peguam dan ianya bukan 'kos' seperti mana kos yang telah diberikan dalam prosiding biasa. Oleh itu, mahkamah bersetuju dengan perayu bahawa 'getting up

fees' boleh dirayu ke Mahkamah Tinggi selaras dengan peruntukan AMK dan tiada halangan untuk perayu berbuat demikian (lihat perenggan 4, 6 & 10).

(2) Mahkamah bersetuju dengan hujah perayu bahawa mahkamah ini seharusnya terikat dengan keputusan Mahkamah Persekutuan dalam kes *Harcharan Singh s/o Sohan Singh v Ranjit Kaur d/o S Gean Singh (didakwa sebagai pentadbir harta pesaka Bhagwan Singh s/o Sohan Singh)* [2011] MLJU 78 dan *Yai Yen Hon v Teng Ah Kok & Sim Huat Sdn Bhd & Anor* [1997] 1 MLJ 136 kerana ianya merupakan kes Mahkamah Persekutuan, namun, mahkamah berpendapat bahawa keputusan kes-kes tersebut boleh dibezakan kerana persoalan-persoalan undang-undang yang dibangkitkan dalam kes-kes tersebut adalah khusus atas keputusan berkaitan s 68 AMK dan tidak langsung menyentuh s 28 AMK seperti kes semasa. Oleh itu, tidak timbul keadaan di mana mahkamah ini tidak mengikut keputusan Mahkamah Persekutuan (lihat perenggan 29 & 37).

(3) Mahkamah bersetuju dengan dapatan Mahkamah Tinggi dalam kes *Lein Tiam Hock v Arumugam a/l Kandasamy* [1999] 6 MLJ 129 kerana kes ini adalah lebih khusus kepada s 28 AMK dan kes ini tidak diakas oleh mana-mana Mahkamah Tinggi sehingga hari ini. Mahkamah telah meneliti bil kos tersebut dan mendapati bahawa dalam kes ini jumlah keseluruhan yang dinyatakan dalam bil kos tersebut telah diputuskan oleh HMS dan tiada rayuan dibuat terhadapnya. Mahkamah tidak bersetuju dengan hujahan perayu bahawa jumlah tuntutan RM122,868.85 wajar diguna pakai kerana tiada rayuan terhadapnya. Berdasarkan kepada bil kos tersebut adalah jelas bahawa 'getting up fees' yang dinyatakan adalah untuk tuntutan sejumlah RM45,000, dan daripada jumlah tersebut HMS hanya membenarkan RM10,000 yang menjadi 'subject matter value' kepada rayuan ini (lihat perenggan 32–33 & 37).

(4) Mahkamah berpendapat bahawa tafsiran bagi s 28 AMK bahawa RM10,000 tersebut adalah berdasarkan kepada jumlah penghakiman adalah selaras dengan niat Parlimen ketika ianya diluluskan dan niat bagi s 28 AMK adalah berlainan daripada s 68 AMK berdasarkan perkataan-perkataan yang terdapat di dalamnya. Apa yang sama adalah tujuan ianya digubal iaitu sebagai tapisan awal untuk rayuan. Selain itu, mahkamah juga bersetuju bahawa jumlah RM10,000 tersebut hanyalah jumlah penghakiman sahaja dan tidak termasuk faedah yang diberikan oleh mahkamah (lihat perenggan 42 & 54).

(5) Dalam kes ini secara jelas bahawa rayuan adalah terhadap jumlah RM10,000 yang dibenarkan oleh HMS dan tidak dinyatakan langsung sebab rayuan tersebut. Apa yang dinyatakan ialah rayuan ini difailkan kerana 'tidak berpuas hati'. Ini bukanlah persoalan undang-undang yang

membolehkan mahkamah untuk memberikan kebenaran untuk merayu di bawah s 28 AMK. Mahkamah bersetuju bahawa tiada keperluan untuk persoalan undang-undang dinyatakan secara khusus, tetapi, sekurang-kurangnya, perlu dinyatakan secara am di dalam notis rayuan ataupun memorandum rayuan (lihat perenggan 48 & 50).

**[Bahasa Malaysia summary**

The sessions court judge ('the SCJ') had allowed encl 29 which was the bill of costs filed by the appellant (a law firm) to assess costs on an attorney and client basis. The SCJ had allowed RM10,000 from the amount of RM40,000 requested by the appellant as 'getting up fees'. The appellant appealed to the High Court against the decision of the SCJ. The respondent had raised the following preliminary objections against the appellant's appeal: (a) whether 'getting up fees' were costs and could not be appealed; and (b) whether s 28 of the Courts of Judicature Act 1964 ('the CJA') was applicable. In relation to the second preliminary objection, the respondent argued that this appeal should be struck out because the amount of the judgment was only RM10,000 and an appeal was only allowed if there was a question of law. The respondent also stated that the notice of appeal was defective because no question of law was stated by the appellant.

**Held**, allowing the respondent's preliminary objections, and striking out the appellant's appeal with no order as to costs:

(1) In contrast to s 28 of the CJA, s 68 of the CJA explicitly stated 'costs', if it was to be appealed, leave of the Court of Appeal was required. However, in this case the amount of the judgment appealed against was the 'getting up fees' to the lawyer and it was not 'costs' that was given in normal proceedings. Therefore, the court agreed with the appellant that 'getting up fees' could be appealed to the High Court in accordance with the provisions of the CJA and there was no obstacle for the appellant to do so (see paras 4, 6 & 10).

(2) The court agreed with the appellant's argument that this court should be bound by the decision of the Federal Court in the case of *Harcharan Singh s/o Sohan Singh v Ranjit Kaur d/o S Gean Singh (didakwa sebagai pentadbir harta pesaka Bhagwan Singh s/o Sohan Singh)* [2011] MLJU 78 and *Yai Yen Hon v Teng Ah Kok & Sim Huat Sdn Bhd & Anor* [1997] 1 MLJ 136 because such cases were the Federal Court cases, however, the court held that the decisions of those cases could be distinguished because the questions of law raised in those cases were specific to decisions related to s 68 of the CJA and did not directly touch s 28 of the CJA as in the present case. Therefore, there were no circumstances where the court did not follow the decision of the Federal Court (see paras 29 & 37).

(3) The court agreed with the findings of the High Court in the case of *Lein*

*Tiam Hock v Arumugam a/l Kandasamy* [1999] 6 MLJ 129 because this case was more specific to s 28 of the CJA and this case had not been overruled by any of the High Court until today. The court had examined the bill of costs and found that in this case the total amount stated in the bill of costs had been decided by the SCJ and no appeal had been made against it. The court did not agree with the appellant's argument that the claim amount of RM122,868.85 should be used because there was no appeal against it. Based on the bill of costs it was clear that the 'getting up fees' stated was for a claim of RM45,000, and of that amount the SCJ had only allowed RM10,000 which was the 'subject matter value' of this appeal (see paras 32–33 & 37).

(4) The court was of the view that the interpretation of s 28 of the CJA that the amount RM10,000 was based on the amount of the judgment was in line with the intention of Parliament when it was approved and the intention of s 28 of the CJA was different from s 68 of the CJA based on the wording therein. The similarity of both provisions was the purpose it was enacted which was as a preliminary screening for appeals. In addition, the court also agreed that the amount of RM10,000 referred to was only the amount of the judgment and did not include the interest granted by the court (see paras 42 & 54).

(5) In this case it was clear that the appeal was against the amount of RM10,000 granted by the SCJ and the reason for the appeal was not stated directly. What was stated was that this appeal was filed because of 'dissatisfaction'. This was not a question of law which would enable the court to grant leave to appeal under s 28 of the CJA. The court agreed that there was no need for the question of law to be specifically stated, but, at the very least, it ought to be stated generally in the notice of appeal or memorandum of appeal (see paras 48 & 50).]

**Kes-kes yang dirujuk**

*Amer Mohideen Dawood v Sneh Bhar w/o Ter Binder Singh* [1996] 2 MLJ 329, MR (dirujuk)

*Badan Pengurusan Bersama Kompleks Pandan Safari Lagoon v Tam Cheng Meng* [2018] 8 MLJ 574; [2018] 8 CLJ 361, MT (tidak diikut)

*Bala Subramaniyam a/l Mookapillai & Anor v Tetuan Raj Selva & Co & Ors* [2021] 7 MLJ 820, MT (dirujuk)

*Datuk Aziz Ishak & Anor v YB Hj Khalid Abdul Samad* [2012] MLJU 1809; [2012] 1 LNS 1341, MR (dirujuk)

*Foong Yok Kok v Prudential Assurance Malaysia Bhd* [2020] 2 MLJ 759; [2020] 1 LNS 85, MR (dirujuk)

*Harcharan Singh s/o Sohan Singh v Ranjit Kaur d/o S Gean Singh (didakwa sebagai pentadbir harta pesaka Bhagwan Singh s/o Sohan Singh)* [2011] MLJU 78; [2011] 3 CLJ 593, MP (diikut)

A *Indah Water Konsortium Sdn Bhd v Yong Kon Fatt* [2007] 5 MLJ 250; [2007] 4 CLJ 613, MR (dirujuk)
*Kannaya & Anor v Teh Swee Eng* [1994] 1 MLJ 508; [1994] 3 CLJ 54, MT (diikut)
*KC Chan Brothers Development Sdn Bhd v Tan Kon Seng & Ors* [2001] 6 MLJ
B 636; [2001] 4 CLJ 659, MT (diikut)
*Khairy Jamaluddin v Dato' Seri Anwar bin Ibrahim and another appeal* [2022] 4 MLJ 194; [2022] 6 CLJ 163, MP (dirujuk)
*Kolej Universiti Tunku Abdul Rahman v Dr Muhammad bin Omar* [2023] 7 MLJ 830, MT (diikut)
C
*Lein Tiam Hock v Arumugam a/l Kandasamy* [1999] 6 MLJ 129; [1999] 2 CLJ 853, MT (dibeza)
*Lim Heng Hoo v Tan Hock Hai & Ors* [1976] 2 MLJ 159; [1976] 1 LNS 63, MP (dirujuk)
D *Mahisha Sulaiha Abdul Majeed v Ketua Pengarah Pendaftaran & Ors and another appeal* [2022] 5 MLJ 194, MR (diikut)
*Malaysian Bunkers System Sdn Bhd v Zainal Fikri bin Hj Ahmad & Anor* [2008] 2 MLJ 340, MR (dirujuk)
*Monohary Teresa & Anor v Tan Ah Lek* [1995] 3 MLJ 365; [1996] 1 CLJ 149,
E MR (dirujuk)
*Mohamad Safuan bin Wasidin & Anor v Mohd Ridhuan bin Ahmad (an infant)* [1994] 2 MLJ 187, MT (dirujuk)
*Nor Azman bin Ghadzali v PP* [2013] 1 MLJ 486, MR (dirujuk)
*Peter ak Runin v Sebiro Holdings Sdn Bhd* [2016] MLJU 1282; [2016] 1 LNS
F 1589, MT (dirujuk)
*Sulaiman bin Mohamad v Malayan Banking Bhd* [1992] 2 MLJ 116; [1991] 1 LNS 39, MT (dirujuk)
*Tan Yang Liang v Tong Swee Ying (mendakwa sebagai pentadbir harta pusaka Tong You Heng)* [2022] MLJU 1806; [2022] 1 LNS 1783, MR (dirujuk)
G *Tiang Kwong Ee v Ing Kai Hong (S) Sdn Bhd* [2000] 5 MLJ 756; [2000] 1 LNS 227, MT (dirujuk)
*Yai Yen Hon v Teng Ah Kok & Sim Huat Sdn Bhd & Anor* [1997] 1 MLJ 136; [1997] 2 CLJ 68, MP (diikut)

H **Undang-undang yang dirujuk**

Akta Mahkamah Kehakiman 1964 ss 27, 28, 28(1), 68, 68(1)(a)

*Manjit Singh a/l Ram Singh (Manjit & Co) bagi pihak perayu.*
I *Eda Nurul Hanani bt Md Daud (Sudesh Narinder and Partners) bagi pihak responden.*

**Azizan Arshad PK:**

PENGENALAN

**[1]** Ini adalah rayuan terhadap keputusan mahkamah ini yang membenarkan bantahan awal responden dan membatalkan rayuan perayu ini atas isu ianya bertentangan dan dihalang oleh s 28 Akta Kehakiman 1964 ('Akta 1964').

**[2]** Hakim mahkamah sesyen telah membenarkan kandungan 29 iaitu bil kos yang difailkan oleh perayu (Tetuan Manjit & Co) untuk menaksirkan kos atas dasar peguam dan anak guam. Hakim mahkamah sesyen telah membenarkan sebanyak RM10,000 daripada jumlah RM40,000 yang dipohon oleh peguam perayu sebagai 'getting up fees'. Peguam perayu telah merayu kepada mahkamah ini terhadap keputusan hakim mahkamah sesyen yang bijaksana. Kedudukan pihak-pihak dirujuk sebagaimana mereka di Mahkamah Tinggi.

ISU-ISU

**[3]** Sebelum mahkamah mendengar kepada merit rayuan, terdapat bantahan awal daripada peguam responden. Mahkamah telah menjemput pihak-pihak untuk berhujah lanjut berkaitan isu-isu yang dibangkitkan:

(a) sama ada 'geeting up fees' merupakan kos dan tidak boleh dirayu; dan

(b) sama ada s 28 Akta Mahkamah Kehakiman 1964 ('Akta 1964') terpakai.

ANALISA MAHKAMAH

*(i) Sama ada kos 'getting up fees' merupakan kos dan tidak boleh dirayu*

**[4]** Dalam kes ini jumlah penghakiman yang dirayu adalah 'getting up fees' kepada peguam dan ianya bukan 'kos' seperti mana kos yang telah diberikan dalam prosiding biasa.

**[5]** Mahkamah ini merujuk kepada ss 27 dan 28 Akta 1964 1964 (dipetik dalam Bahasa Inggeris) sebagai panduan:

> 27 Appellate civil jurisdiction
>
> The appellate civil jurisdiction of the High Court shall consist of the hearing of appeals from subordinate courts as hereinafter provided.
>
> 28 Civil appeals from subordinate courts
>
> (1) No appeal shall lie to the High Court in any of the following cases:

A
(a) subject to any other written law, from a decision of a subordinate court in any civil cause or matter where the amount in dispute or the value of the subject matter is ten thousand ringgit or less except on a question of law;

(b) where a subordinate court dismissed any application for a summary judgment;

B
(c) where a subordinate court dismissed any application to strike out any writ or pleading; and

(d) where a subordinate court allowed any application to set aside a judgment in default.

C
**[6]** Peguam perayu telah membuat perbandingan s 28 Akta 1964 dengan s 68 Akta 1964. Mahkamah ini bersetuju dengan peguam perayu Yang Bijaksana bahawa 'getting up fees' boleh dirayu ke Mahkamah Tinggi. Ini adalah kerana dalam s 68 Akta 1964, berbeza dengan s 28 Akta 1964. Di dalam s 68 Akta 1964 secara terang-terangan dinyatakan 'kos', sekiranya hendak dirayu mestilah mendapat kebenaran daripada Mahkamah Rayuan. Ringkasan kepada s 68 Akta 1964 ini diterangkan dalam kes *Malaysian Bunkers System Sdn Bhd v Zainal Fikri bin Hj Ahmad & Anor* [2008] 2 MLJ 340, di mana diputuskan seperti berikut:

D

E
[24] For purposes of completeness, pursuant to s 68(1)(c) or equipollent provisions, the principles enunciated in the above authorities may be stated as follows:

1. As a general rule, no appeal shall be brought to the Court of Appeal where the judgment or order relates to costs only, which by law are left to the discretion of the court, except with the leave of the Court of Appeal.

F
2. By way of exceptions, s 68(1)(c) would admit an appeal:

(a) where the appeal involves a question of law and principle;

(b) where the appeal in relation to costs is only part of a larger appeal against the order which allows the claim ie where the appeal was not in relation to costs only; or

G
(c) where the appeal concerns a genuine complaint, not only about costs, but also about other matters, in which case the court has full jurisdiction to deal with both the costs and other matters, and even if the appeal fails on other matters, the Court of Appeal has jurisdiction to deal with costs.

H
**[7]** Peguam perayu yang bijaksana telah merujuk kepada kes *Lim Heng Hoo v Tan Hock Hai & Ors* [1976] 2 MLJ 159; [1976] 1 LNS 63, di mana mahkamah telah menghuraikan berkaitan dengan 'legal fees' seperti berikut:

I
*Order 65 r 27(47) speaks of 'few' and not 'costs' for more than one advocate for one party or set of defendants. Mr Thomas says this is irrelevant in a fused profession. We do not agree with him. The term 'fees' here clearly refer to counsel's fees and is distinct from the term 'costs' which is a term of art in law. Fees may be allowed as part of the costs in an action.* A taxing master may allow the fee marked on the brief in taxing costs. It is

because of the very fact that the two professions are fused that difficulty may arise in the interpretation of the Rules of the Supreme Court. The surprising thing is that such difficulty does not often come up. There are cases where two counsel or where a leading counsel and a junior counsel are briefed by a firm of instructing solicitors. In England it is the custom or practice to allow a junior. (Penekanan ditambah.)

**[8]** Prinsip berkaitan rayuan terhadap 'getting up fees' ini juga telah dijelaskan dalam kes *Bala Subramaniyam a/l Mookapillai & Anor v Tetuan Raj Selva & Co & Ors* [2021] 7 MLJ 820:

[1] This is an appeal by the appellants to set aside the decision of the learned Senior Assistant Registrar ('SAR') in awarding RM400,000 as fees to the respondent after taxing of the bill of cost ('BOC').

Held:

(2) There was nothing to suggest that the SAR had based his decision on the wrong principles in awarding the sum of RM400,000 as 'getting up' fees. This sum was a reasonable amount taking into consideration the following factors ...

**[9]** Dalam kes *Peter ak Runin v Sebiro Holdings Sdn Bhd* [2016] MLJU 1282; [2016] 1 LNS 1589, diputuskan seperti berikut:

This ruling is written in respect of an appeal filed by the defendant against the decision of the learned senior assistant registrar in awarding cost of RM53,154.50, which is inclusive of an allocator fee of RM1,070 as well as ordering an additional cost of RM500 against the defendant after dismissing the defendant's preliminary objection raised at the hearing of the Notice of Taxation.

**[10]** Kesimpulan, bagi isu pertama ini, mahkamah memutuskan bahawa 'getting up fees' boleh dirayu kepada Mahkamah Tinggi selaras dengan peruntukan dalam Akta 1964 dan tiada halangan untuk perayu berbuat demikian.

*(ii) Sama ada s 28 Akta 1964 terpakai*

**[11]** Dalam kes ini, seperti biasa, isu berkaitan 'subject to any other written law, from a decision of a subordinate court in any civil cause or matter where the amount in dispute or the value of the subject matter is ten thousand ringgit or less except on a question of law' masih menjadi isu dalam setiap penghakiman sama ada mengambilkira 'jumlah penghakiman' atau 'jumlah dalam penyata tuntutan'.

**[12]** Bantahan dalam kes ini oleh responden adalah juga atas isu yang sama iaitu rayuan ini wajar dibatalkan kerana jumlah penghakiman adalah RM10,000 sahaja dan rayuan hanya dibenarkan sekiranya terdapat persoalan

A undang-undang. Responden juga dalam hujahan menyatakan bahawa notis rayuan adalah cacat kerana tiada persoalan undang-undang dnyatakan oleh perayu.

B **[13]** Perayu sebaliknya menyatakan bahawa jumlah di dalam tuntutan iaitu RM45,000 sepatutnya diambil kira dan tiada persoalan undang-undang yang perlu dinyatakan dalam notis rayuan kerana tiada kebenaran yang perlu diperolehi.

C **[14]** Mahkamah ini akan mengulas berkaitan isu 'subject matter' terlebih dahulu dan berkaitan 'kecacatan notis rayuan kemudiannya. Ini adalah kerana sekiranya responden gagal mematuhi 'tapisan' (*filter*) s 28 Akta 1964 yang juga seakan-akan sama dengan s 68 Akta 1964, maka isu kecacatan notis rayuan tidak lagi memberikan apa-apa kesan.

D **[15]** Bagi tujuan kes ini tumpuan adalah kepada s 28 Akta 1964 dan dalam keadaan yang relevan mahkamah ini akan membuat semakan silang (*cross-reference*) dengan s 68 Akta 1964.

E **[16]** Dalam mentafsir maksud kepada s 28 Akta 1964, terdapat nas-nas terdahulu telah mentafsir dan mengupas maksud dalam perkataan-perkataan berikut:

(i) apakah maksud 'the amount in disputes', sama ada jumlah
F penghakiman atau jumlah tuntutan?

(ii) sama ada jumlah RM10,000 termasuk juga faedah?

(iii) apakah mandatori persoalan undang-undang dibangkitkan secara khusus atau secara am dalam notis rayuan? dan

G (iv) apakah maksud 'persoalan undang-undang?'.

ANALISA MAHKAMAH

H *(i) Apakah maksud 'the amount in disputes' (jumlah dipertikaikan), sama ada jumlah penghakiman atau jumlah tuntutan?*

**[17]** Terdapat nas-nas yang mentafsir maksud jumlah yang dipertikaikan adalah jumlah yang diputuskan dan bukan jumlah yang dituntut atau
I gabungan jumlah tuntutan bersama dengan jumlah tuntutan balas.

**[18]** Dalam kes *Lein Tiam Hock v Arumugam a/l Kandasamy* [1999] 6 MLJ 129; [1999] 2 CLJ 853, memutuskan bahawa:

> The amount in dispute or the value of the subject-matter' in *s 28 of the CJA must*

*relate to the decision of a subordinate court and not to the sum claimed by a plaintiff or the combined sum of a claim and a counterclaim*. Hence, the amount in dispute or the value of the subject-matter in the instant appeal was the judgment sum of RM9,150. The defendant's instant appeal was, therefore, incompetent. (Penekanan ditambah.)

**[19]** Dalam kes *Lein Tiam Hock v Arumugam a/l Kandasamy*, mahkamah telah merujuk kepada kes Mahkamah Persekutuan iaitu *Yai Yen Hon v Teng Ah Kok & Sim Huat Sdn Bhd & Anor* [1997] 1 MLJ 136; [1997] 2 CLJ 68 dan juga kes oleh Mahkamah Rayuan iaitu *Monohary Teresa & Anor v Tan Ah Lek* [1995] 3 MLJ 365; [1996] 1 CLJ 149 berkaitan s 68(1)(a) Akta 1964 dan memutuskan bahawa:

I am satisfied that the immediate five cases discussed above are inapplicable to the scenario as envisaged by s 28, as they are easily distinguishable. This provision is plain and clear. To use the words of Mohamed Azmi SCJ in the case of *Tan Weng Chiang v Public Prosecutor* [1992] 2 MLJ 625, at 630:

> Where the meaning of words in the statute is plain and unambiguous, judges should not invent fancy ambiguities.

Pursuing the tenets of interpretation, I am satisfied that the amount in dispute, or the subject-matter provided for under s 28, must relate to the decision of the subordinate court, and not to any sum claimed either by the plaintiff or the combined sum of the claim and counterclaim submitted by the defendant, if any. *Apart from attaching weight or significance to that term 'decision', the provision of s 28 must also be read as a whole. Indisputably, it is also beyond denial that the latter provision does not have the terms of 'claim' or 'suit', as promulgated in the material provisions discussed in the above cases. If Parliament had wanted to treat ss 28 and 68(1)(a) of the Courts of Judicature Act 1964 in similar fashion, it certainly would not have hesitated to do so.* (Penekanan ditambah.)

**[20]** Dalam kes *Datuk Aziz Ishak & Anor v YB Hj Khalid Abdul Samad* [2012] MLJU 1809; [2012] 1 LNS 1341, diputuskan bahawa:

the amount or value of the subject-matter of the claim 'in s 68(1) CJA said, in order to determine the 'amount or value of the subject-matter of the claim' for the purpose of s 68(1)(a) of the CJA, the court must look at the adjudged sum and not the amount claimed in the statement of claim.

**[21]** Dalam kes *Foong Yok Kok v Prudential Assurance Malaysia Bhd* [2020] 2 MLJ 759; [2020] 1 LNS 85, Mahkamah Rayuan mengikuti kes *Amer Mohideen Dawood v Sneh Bhar w/o Ter Binder Singh* [1996] 2 MLJ 329 dan menyatakan bahawa:

'amount' or 'value' must be 'the total amount of the claim in the action which has been adjudged to be payable' or the value of the subject matter of the claim 'in the

A action which has been adjudged as recoverable because the appeal is against the judgment (and not against the claim made by the claimants in the pleadings)'.

**[22]** Selanjutnya dalam kes *Foong Yok Kok v Prudential Assurance Malaysia Bhd* tersebut, Kamardin Hashim JCA menyatakan bahawa:

B

> [37] In *Amer Mohideen Dawood v Sneh Bhar w/o Ter Binder Singh* [1996] 2 MLJ 329 this court on similar issue decided that: *'The amount of the claim' has to mean the total amount or sum of the claim in the action which has been adjudged to the payable, and if it is not a money claim, it is 'the value of the subject-matter of the claim' in the action which has been adjudged as recoverable, because it is only against the judgment* (and not against the claim made by claimants in their pleadings) that the appeal could be brought. (Penekanan ditambah.)

C

**[23]** Berbalik semula kepada kes di hadapan mahkamah ini, peguam perayu Yang Bijaksana berhujah bahawa *jumlah yang dituntut* sewajarnya *diterima* oleh mahkamah ini sebagai panduan untuk menentukan had jumlah bagi sesuatu rayuan dan *bukan jumlah penghakiman.*

D

**[24]** Antara kes-kes yang telah dirujuk adalah kes *Badan Pengurusan Bersama Kompleks Pandan Safari Lagoon v Tam Cheng Meng* [2018] 8 MLJ 574; [2018] 8 CLJ 361 di mana Faizah Jamaludin JC berpendapat bahawa s 28(1) of the Akta 1964 merujuk kepada tuntutan plaintif dan bukan kepada jumlah yang dihakimi oleh mahkamah. Beliau tidak bersetuju dengan kes *Lein Tiam Hock v Arumugam a/l Kandasamy* [1999] 6 MLJ 129; [1999] 2 CLJ 853.

E

F

**[25]** Peguam perayu yang bijaksana juga telah merujuk kepada kes *Harcharan Singh s/o Sohan Singh v Ranjit Kaur d/o S Gean Singh (didakwa sebagai pentadbir harta pesaka Bhagwan Singh s/o Sohan Singh)* [2011] MLJU 78; [2011] 3 CLJ 593. Di dalam kes tersebut, Mahkamah Persekutuan tidak membincangkan s 28(1) Akta 1964 tetapi merujuk secara khusus kepada s 68 Akta 1964. Hashim Yusoff FCJ, memutuskan bahawa:

G

> [12] We agree with the Court of Appeal's decision in *Mohd Tahir Mohd Sheriff v Ramlah Abdullah* [2004] 1 CLJ 865 that s 68(1)(a) of the Act is unambiguous. It clearly states that no appeal shall be brought to the Court of Appeal when the amount or value of the subject matter of the claim (exclusive of interest) is less than RM250,000, except with leave of the Court of Appeal.

H

> [13] *This appeal therefore hinges on the value of the disputed property. The phrase 'amount or value of the subject matter of the claim'. Section 68(1)(a) of the Act was considered by the Supreme Court in Yai Yen Hon v Teng Ah Kok & Sim Huat Sdn Bhd & Anor* [1997] 1 MLJ 136; [1997] 2 CLJ 68 *where it was held that it must be read as the amount or value of the claim filed in the civil suit and not the judgment amount granted against. That would be the determinant factor in deciding whether leave was necessary.*

I

**[26]** Peguam perayu yang bijaksana berhujah bahawa kes *Datuk Aziz Ishak & Anor v YB Hj Khalid Abdul Samad* adalah dibezakan dengan fakta bahawa dalam kes *Datuk Aziz Ishak* ia melibatkan defendan sebagai perayu manakala kes di hadapan mahkamah sekarang adalah plaintif sebagai perayu di mana diputuskan bahawa:

> With respect, we take a different view. In our judgment, in the context of the present case, *considering that it is the defendants who are appealing, and not the plaintiff, the 'amount or value of the subject-matter of the claim' for the purpose of s 68(1)(a) of the Courts of Judicature Act 1964, ought to be the adjudged sum of RM60,000, and not the pleaded sum.* We find support for the position that we take in the judgment of the Court of Appeal in *Amer Mohideen Dawood v Sneh Bhar w/o Ter Binder Singh* [1996] 2 MLJ 329. In this case, NH Chan JCA (sitting with KC Vohrah and Mohd Noor Ahmad JJ (as both of them then were)), in delivering the judgment of the Court of Appeal, in clear language ruled (at pp 331–332).
>
> Counsel for the respondent in this appeal applies by notice of motion for the appeal to be dismissed on the ground that the appellant's appeal to the Court of Appeal is incompetent as the value of the subject-matter of the claim under appeal was less than RM250,00 and no leave to appeal to the Court of Appeal was obtained. Section 68(1)(a) of the Courts of Judicature Act 1964 is as follows:
>
> > 68(1) No appeal shall be brought to the Court of Appeal in any of the following cases:
> >
> > (a) when the amount or value of the subject-matter of the claim (exclusive of interest) is less than two hundred and fifty thousand ringgit, except with the leave of the Court of Appeal;
>
> 'The amount of the claim' has to mean the total amount or sum of the claim in the action which has been adjudged to be payable, and if it is not a money claim, it is 'the value of the subject matter of the claim' in the action which has been adjudged as recoverable, because it is only against the judgment (and not against the claim made by claimants in their pleadings) that the appeal could be brought. See *Allan v Pratt* [1888] 13 AC 780. The Earl of Selborne, giving the judgment of the Privy Council (consisting of the Earl of Selborne, Lord Watson, Lord Hobhouse and Sir Barnes Peacock), said this, at pp 781–782:
>
> > Their Lordships are of opinion that the appeal is incompetent. *The proper measure of value for determining the question of the right of appeal is, in their judgment, the amount which has been recovered by the plaintiff in the action and against which the appeal could be brought.* Their Lordships, even if they were not bound by it, would agree in principle with the rule laid down in the judgment of this tribunal delivered by Lord Chelmsford in the case of *Macfarlane v Leclaire* 15 Moore PCC 181, that is, that the judgment is to be looked at as it affects the interests of the party who is prejudiced by it, and who seeks to relieve himself from it by appeal. If there is to be a limit of value at all, that seems evidently the right principle on which to measure it. The person against whom the judgment is passed has either lost what he demanded as plaintiff or has been adjudged to pay something or to do something as defendant. It may be that the value to the defendant of an adverse judgment is greater than the value laid by the plaintiff in

his claim. If so, which was the case in *Macfarlane v Leclaire*, it would be very unjust that he should be bound, not by the value to himself but by the value originally assigned to the subject-matter of the action by his opponent. The present is the converse case. A man makes a claim for much larger damages than he is likely to recover. The injury to the defendant, if he is wrongly adjudged to pay damages, is measured by the amount of damages which he is adjudged to pay. That is not in the least enhanced to him by the fact that some greater sum had been claimed on the other side.

...

The appellant (who was the defendant in the High Court) as 'the person against whom the judgment is passed ... has been adjudged ... to do something as defendant', namely, he was ordered specifically to perform the sale and purchase agreement dated 14 September 1989. An appeal against that judgment will be prohibited if the value of the subject-matter of the judgment for specific performance is below the value of RM250,000 (if leave to appeal to the Court of Appeal has not been obtained).

*If 'the amount of the claim' or 'the value of the subject-matter of the claim' is to be based on the claim as pleaded in the statement of claim and not in the judgment, then the purpose of s 68(1)(a) of the Act could be circumvented quite easily by claimants merely stating in their pleadings, in every case, that they are claiming for more than RM250,000.* This easy way to get round the need to obtain leave makes the entire provision of section 68(1)(a) of the Act superfluous. This is how it was put by Mahadev Shankar JCA in *Monohary Teresa v Tan Ah Lek* [1995] 3 MLJ 365, at p 368:

> *Such an approach ... could side-track the purpose of s 68(1)(a) because claimants could get around the need to obtain leave merely by stipulating in their pleadings that they are claiming for more than RM250,000 in every case.* (Penekanan ditambah.)

**[27]** Peguam plaintif yang bijaksana juga telah merujuk kepada kes Mahkamah Rayuan iaitu *Tan Yang Liang v Tong Swee Ying (mendakwa sebagai pentadbir harta pusaka Tong You Heng)* [2022] MLJU 1806; [2022] 1 LNS 1783 yang telah mengikut prinsip dalam kes *Yai Yen Hon* dan *Harcharan Singh* yang memutuskan bahawa:

> [14] The phrase 'amount or value of the subject matter of the claim' in s 68(1)(a) CJA. was considered by the Supreme Court in *Yai Yen Hon v Teng Ah Kok & Sim Huat Sdn Bhd & Anor* [1997] 1 MLJ 136; [1997] 2 CLJ 68 (FC) and it was held that it must be read as the amount or value of the claim filed in the civil suit and not the judgment amount appealed against, that would be the determinant factor in deciding whether leave was necessary. That was a case where the appellant claimed damages totalling RM4,000,000 arising from an accident but only RM62,400 was awarded and it was held that leave of the court was not required for his appeal. The determinant factor is the value of the subject matter as disclosed in the claim when filed. Applying that test the appellant must necessarily obtain leave of this court to pursue his appeal.

**[28]** Secara keseluruhan kedua-dua peguam bagi perayu dan responden merujuk kepada kes *Datuk Aziz Ishak & Anor v YB Hj Khalid Abdul Samad*, *Lein Tiam Hock v Arumugam a/l Kandasamy*, *Amer Mohideen Dawood v Sneh Bhar w/o Ter Binder Singh* dan *Datuk Aziz Ishak & Anor v YB Hj Khalid Abdul Samad* dan juga kepada kes *Harcharan Singh s/o Sohan Singh v Ranjit Kaur d/o S Gean Singh (didakwa sebagai pentadbir harta pesaka Bhagwan Singh s/o Sohan Singh)*; *Yai Yen Hon v Teng Ah Kok & Sim Huat Sdn Bhd & Anor*, *Monohary Teresa & Anor v Tan Ah Lek* dan *Tan Yang Liang v Tong Swee Ying (mendakwa sebagai pentadbir harta pusaka Tong You Heng)* [2022] MLJU 1806; [2022] 1 LNS 1783.

**[29]** Mahkamah ini bersetuju dengan hujah peguam perayu yang bijaksana bahawa mahkamah ini seharusnya terikat dengan keputusan Mahkamah Persekutuan dalam kes *Harcharan Singh* dan *Yai Yen Hon* kerana ianya merupakan kes Mahkamah Persekutuan.

**[30]** Dalam kes *Harcharan Singh*, Mahkamah Persekutuan telah memutuskan bahawa:

> (2) As for the contention that s 68(1)(a) did not apply because the relief sought by the appellant was for a declaration, this court agreed with the Court of Appeal's judgment in *Lam Kong Company Ltd v Thong Guan Co Pte Ltd* where it was held, inter alia, that item (ii) of the Court of Appeal Practice Direction No 2 of 1996 only applies to declarations respecting subject matters that have no value attached to them or those with values that cannot be quantified. *Lam Kong Company Ltd v Thong Guan Co Pte Ltd (foil)* (para 18)
>
> (3) *In the present appeal, the subject matter of the claim had been identified and its value determined at RM248,500.* Therefore, s 68(1)(a) was still applicable, (para 19) (Penekanan ditambah.)

**[31]** Mengguna pakai prinsip kes *Harcharan* dalam kes ini, berdasarkan kepada bil kos, perayu menyatakan bahawa jumlah yang dituntut adalah sebanyak RM122,868.85. Berdasarkan kepada jumlah ini, ianya telah melebihi RM10,000 dan tidak diperlukan kebenaran untuk merayu.

**[32]** Mahkamah ini meneliti bil kos tersebut dan mendapati bahawa dalam kes ini jumlah keseluruhan yang dinyatakan dalam bil kos tersebut telah diputuskan oleh mahkamah sesyen dan tiada rayuan dibuat terhadapnya. Mahkamah tidak bersetuju dengan hujahan peguam perayu bahawa jumlah RM122,868.85 wajar diguna pakai kerana tiada rayuan terhadapnya. Mahkamah hanya melihat kepada rayuan yang dibuat dalam notis rayuan sahaja dan jumlah dalam tuntutan berkaitan semasa didengar dan diputuskan di hadapan hakim mahkamah sesyen Yang Bijaksana.

**[33]** Berdasarkan kepada bil kos tersebut adalah jelas bahawa 'getting up fees

'yang dinyatakan adalah untuk tuntutan sejumlah RM45,000, dan daripada jumlah tersebut mahkamah hanya membenarkan RM10,000 yang menjadi 'subject matter value' kepada rayuan ini.

**[34]** Mahkamah ini juga merujuk kepada kes *Badan Pengurusan Bersama Kompleks Pandan Safari Lagoon v Tam Cheng Meng* yang memutuskan bahawa:

> [15] Respectfully, I have to disagree with the finding in *Lein Tiam Hock*, which being a decision of the High Court is only of persuasive authority on this court. In my view, s 28 of the CJA read as a whole means that there cannot be an appeal from a decision of a subordinate court in a civil cause or matter, where the amount in dispute or the value of the subject matter is RM10,000 or less. Section 28 does not state 'where the decision of the subordinate court is for a sum of RM10,000 or less'. Similar to s 68, s 28 states 'where the value in dispute or the value of the subject matter' is for a sum of RM10,000 or less. For this reason, in my view, the Federal Court and the Court of Appeal's decisions in *Yai Yen Hon* and *Monohary Teresa* respectively are not distinguishable: they apply to appeals from the decisions of the subordinate courts to the High Court in a civil cause or matter.
>
> [16] Therefore, notwithstanding that the amount awarded by the Magistrate's Court is RM3,579.87, the amount in dispute in this instant case is the sum of RM81,413.93 which the plaintiff claims is the service charges owing by defendant as at 22 June 2015.

**[35]** Dalam kes *Tan Yang Liang v Tong Swee Ying* juga diputuskan bahawa:

> [18] The relevant passages from the decision of the Federal Court in *Harcharan* read as follows:
>
> > [14] The phrase 'amount or value of the subject matter of the claim' in s 68(1)(a) CJA was considered by the Supreme Court in *Yai Yen Hon v Teng Ah Kok & Sim Huat Sdn Bhd & Anor* [1997] 1 MLJ 136; [1997] 2 CLJ 68 FC and it was held that it must be read as the amount or value of the claim filed in the civil suit and not the judgment amount appealed against, that would be the determinant factor in deciding whether leave was necessary. That was a case where the appellant claimed damages totalling RM4,000,000 arising from an accident but only RM62.400 was awarded and it was held that leave of the court was not required for his appeal.
>
> The determinant factor is the value of the subject matter as disclosed in the claim when filed. Applying that test the appellant must necessarily obtain leave of this court to pursue his appeal.

**[36]** Berdasarkan kepada peruntukan dan kes-kes yang dirujuk, adalah jelas peruntukan s 28 Akta 1964 ini berbeza daripada s 68 Akta 1964. Namun, mahkamah ini merujuk dan menerima pakai kes *Lein Tiam Hock v Arumugam a/l Kandasamy* yang memutuskan:

> Another case which is relevant for consideration is the case of *Monohary Teresa &*

*Anor v Tan Ah Lek* [1995] 3 MLJ 365; [1996] 1 CLJ 149. In this case the defendant appellant, erroneously thought that leave was required in the circumstances of the case, as the judgment sum was below RM250,000 (after amendment by Act A887). He thenceforth filed a motion for that purpose, and due to that time-consuming act, time for his appeal expired. He thereafter applied for an extension of time. Again, the Court of Appeal held that leave to appeal was not required in spite of the award being below RM250,000. And again, the decision was based on the sum claimed rather than on the judgment sum. *Since we are on the subject of 'decision', it is worthwhile to note at the earliest of stages that that word is absent in s 68(1)(a). Instead, it contains the word [1999] MLJU 227 at 13 'claims'.* Adverting back to this case, in the ensuing judgment, His Lordship Mahadev Shankar JCA took time off to criticise the imprecise words of s 68. On the pretext of the excusable mistake, an extension of time to file the appeal was allowed.

I am satisfied that the immediate five cases discussed above are inapplicable to the scenario as envisaged by s 28, as they are easily distinguishable. This provision is plain and clear. To use the words of Mohamed Azmi SCJ in the case of *Tan Weng Chiang v Public Prosecutor* [1992] 2 MLJ 625 at 630:

> Where the meaning of words in the statute is plain and unambiguous, judges should not invent fancy ambiguities.

*Pursuing the tenets of interpretation, I am satisfied that the amount in dispute, or the subject-matter provided for under s 28, must relate to the decision of the subordinate court, and not to any sum claimed either by the plaintiff or the combined sum of the claim and counterclaim submitted by the defendant, if any. Apart from attaching weight or significance to that term 'decision', the provision of s 28 must also be read as a whole. Indisputably, it is also beyond denial that the latter provision does not have the terms of 'claim' or 'suit', as promulgated in the material provisions discussed in the above cases. If Parliament had wanted to treat ss 28 and 68(1)(a) of the Courts of Judicature Act 1964 in similar fashion, it certainly would not have hesitated to do so. Synchronization is no insurmountable obstacle for the Legislators.* (Penekanan ditambah.)

**[37]** Mahkamah ini bersetuju dengan dapatan kes ini yang lebih khusus kepada s 28 Akta 1964 dan kes ini tidak diakas oleh mana-mana mahkamah tertinggi sehingga hari ini. Mahkamah ini juga mempertimbangkan hujahan peguam perayu yang bijaksana bahawa mahkamah ini sewajarnya mematuhi keputusan yang dibuat oleh Mahkamah Persekutuan. Mahkamah ini sedar akan keputusan kes-kes tersebut, namun berpendapat ianya boleh dibezakan atas persoalan undang-undang yang diputuskan. Persoalan undang-undang yang berbangkit dalam semua kes di Mahkamah Persekutuan adalah khusus atas keputusan berkaitan s 68 Akta 1964 dan tidak ada langsung disentuh s 28 Akta 1964. Manakala kes di hadapan mahkamah sekarang adalah s 26 Akta 1964. Tidak timbul keadaan di mana mahkamah ini tidak mengikut keputusan Mahkamah Persekutuan.

Di dalam kes *Datuk Aziz Ishak & Anor v YB Hj Khalid Abdul Samad* Mohd Hishamudin Yunus JCA memutuskan bahawa:

A We note with dismay that the well-reasoned judgment of the Court of Appeal in *Amer Mohideen* was not considered by the Supreme Court in *Yai Yen Hon*. It is highly probable that *Amer Mohidee*n was somehow inadvertently not brought to the attention of the Supreme Court. Be that as it may, the Supreme Court in *Yai Yen Hon*, nevertheless, did say:

B

> *There might well be cases where the sums adjudged may be validly taken into account; the instant appeal before us, however, is not one such case.* (Penekanan ditambah.).

**[38]** Mahkamah ini bersetuju dengan pendapat YA Leong Wei Hong JC C dalam kes *Kolej Universiti Tunku Abdul Rahman v Dr Muhammad bin Omar* [2023] 7 MLJ 830 seperti berikut:

> [41] However, to use the idiom if push comes to shove, I find the reasoning of the High Court in *Lein Tiam Hock v Arumugam a/l Kandasamy* [1999] 6 MLJ 129; [1999] 2 CLJ 853 HC, the Court of Appeal in *Amer Mohideen Dawood v Sneh Bhar w/o Ter Binder Singh* [1996] 2 MLJ 329 (CA) and *Datuk Aziz Ishak & Anor v YB Hj Khalid Abdul Samad* [2012] MLJU 1809; [2012] 1 LNS 1341 CA compelling. D
>
> [42] One may disagree with the Court of Appeal's decision in *Datuk Aziz Ishak & Anor v YB Hj Khalid Abdul Samad* [2012] MLJU 1809; [2012] 1 LNS 1341 (CA) as the Court of Appeal there failed to follow the contrary view of the Federal Court E in both *Yai Yen Hon v Teng Ah Kok & Sim Huat Sdn Bhd & Anor* [1997] 1 MLJ 136 and *Harcharan Singh s/o Sohan Singh v Ranjit Kaur d/o S Gean Singh (didakwa sebagai pentadbir harta pesaka Bhagwan Singh s/o Sohan Singh)* [2011] MLJU 78. The Court of Appeal was bound to follow the Federal Court based on the principle of stare decisis (Latin, to stand by decided matters). F

**[39]** Bagi menghuraikan lebih lanjut kepada perenggan 42 di dalam kes *Kolej Universiti Tunku Abdul Rahman v Dr Muhammad bin Omar*, mahkamah ini merujuk kepada kes *Mahisha Sulaiha Abdul Majeed v Ketua Pengarah* G *Pendaftaran & Ors and another appeal* [2022] 5 MLJ 194, yang memutuskan seperti berikut:

> [144] Therefore, the Federal Court in CCH did not decide on the same provisions of the FC as in *CTEB*'s case. *I am of the considered opinion that the cases of CTEB and CCH are not in conflict on the same point of law, as the decision of CCH is on* s 1(a) *of* H *Part II read together with s 19B of Part III. As such, the latter case of CCH did not overrule CTEB on the interpretation of art 14(1)(b) read with s 1(b) of Part II, Second Schedule of the FC.*

**[40]** Berdasarkan kes *Mahisha Sulaiha*, mahkamah berpendapat, walaupun I terdapat keputusan mahkamah yang lebih tinggi ianya tidak akan secara automatik membatalkan kes terdahulu kecuali ianya berkaitan isu undang-undang yang sama. Sekiranya terdapat keadaan sebegini maka mahkamah ini boleh merujuk kepadanya walaupun tidak mengikutinya. Bukanlah niat mahkamah ini untuk tidak mematuhi 'stare decisis' atau duluan

mengikat kerana sekiranya ianya berkaitan isu undang-undang yang sama yang diputuskan oleh Mahkamah Persekutuan, mahkamah ini mesti mematuhinya walaupun tidak bersetuju dengan keputusan tersebut.

Atas alasan ini mahkamah tidak bersetuju dengan kes *Badan Pengurusan Bersama Kompleks Pandan Safari Lagoon v Tam Cheng Meng* yang juga merupakan kes Mahkamah Tinggi dan mengguna pakai kes *Lein Tiam Hock v Arumugam a/l Kandasamy* atas isu pemakaian s 28 Akta 1964. Bagi kes-kes *Foong Yok Kok v Prudential Assurance Malaysia Bhd* pula, kedua-dua kes telah dirujuk di [39] Mahkamah Persekutuan dalam kes *Khairy Jamaluddin v Dato' Seri Anwar bin Ibrahim and another appeal* [2022] 4 MLJ 194; [2022] 6 CLJ 163 semasa pendengaran kebenaran untuk merayu. Isu yang dibangkitkan juga adalah berkaitan dengan s 68 seperti berikut pada ms 169:

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> ...
>
> (vii) even though the adjudged sum is less than RM250,000, leave to appeal to the Court of Appeal is not required as the threshold is the value of the subject matter and not the subject matter of the decision (*Yap Fook Cheong & Anor v Burkill (M) Sdn Bhd & Anor* [1991] 3 CLJ 1711; [1991] 1 CLJ Rep 499; [1991] 3 MLJ 160 (SC)).
>
> [15] In reply, learned counsel for the respondent argued firstly that the appeal is incompetent as the adjudged value was below RM250,000 and no prior leave to appeal had been obtained (*Foong Yok Kok v Prudential Assurance Malaysia Bhd* [2020] 2 MLJ 759; [2020] 1 LNS 85 (CA); *Datuk Aziz Ishak & Anor v YB Hj Khalid Abdul Samad* [2012] MLJU 1809; [2012] 1 LNS 1341).

**[41]** Walaupun mahkamah tidak membuat keputusan berkaitan isu tersebut, namun Mahkamah Persekutuan juga tidak mengakas atau membuat sebarang komen berkaitan kedua-dua kes Mahkamah Rayuan tersebut. Pada peringkat ini, kes tersebut masih boleh dirujuk dan 'still a good law'.

**[42]** Akhirnya mahkamah ini juga berpendapat tafsiran bahawa RM10,000 tersebut berdasarkan kepada jumlah penghakiman adalah selaras dengan niat Parlimen ketika ianya diluluskan dan niat s 28 Akta 1964 adalah berlainan daripada s 68 Akta 1964 berdasarkan perkataan-perkataan yang terdapat di dalamnya. Apa yang sama adalah tujuan ianya digubal iaitu sebagai tapisan awal untuk rayuan. Ini adalah selaras dengan keputusan kes *Amer Mohideen Dawood v Sneh Bhar w/o Ter Binder Singh* [1996] 2 MLJ 329, yang memutuskan bahawa:

> This is how it was put by Mahadev Shankar JCA in *Monohary Teresa v Tan Ah Lek* [1995] 3 MLJ 365 at p 368:
>
> *Such an approach ... could side-track the purpose of s 68(1)(a) because claimants*

A *could get round the need to obtain leave merely by stipulating in their pleadings that they are claiming for more than RM250,000 in every case.* (Penekanan ditambah.)

**[43]** Ini juga adalah niat sebenar s 28 Akta 1964 seperti mana yang telah dihuraikan dalam kes *Lein Tiam Hock v Arumugam a/l Kandasamy.*

B

*(iii) Apakah mandatori persoalan undang-undang dibangkitkan secara khusus atau secara am dalam notis rayuan?*

C **[44]** Isu ini dibangkitkan oleh peguam responden. Walaupun mahkamah ini telah membuat keputusan bahawa berdasarkan isu (i) di atas, rayuan ini dibatalkan, namun bagi tujuan melengkapkan isu yang telah hujah pihak-pihak, mahkamah sekarang memberikan alasan berkaitan isu ini.

D **[45]** Mahkamah merujuk kepada kes *Mohamad Safuan bin Wasidin & Anor v Mohd Ridhuan bin Ahmad (an infant)* [1994] 2 MLJ 187, diputuskan bahawa:

> Another more important point, the decisive factor, in favour of the respondent is this. It was argued, rather admirably, that the quantum involved was below RM10,000 and the memorandum of appeal did not raise any question of law and, consequently, the appeal should be dismissed forthwith with costs. I am impressed by this short and curt point. s 28(1) of the Courts of Judicature Act 1964 provides:
>
> E
>
> > Subject to any other written law, no appeal shall lie to the High Court from a decision of a subordinate court in any civil cause or matter where the amount in dispute or the value of the subject-matter is ten thousand ringgit or less except on a question of law.
>
> F
>
> In my judgment, in the case of an appellant intending to appeal from the decision of the subordinate court where the quantum is less than RM10,000, the notice of appeal in Form 140 must state generally the question or questions of law that he wishes to appeal on. Any failure to conform to this basic statutory requirement would strike at the very core of the appeal and, consequently, would nullify the appeal.
>
> G
>
> For the reasons adumbrated above, I dismissed the appeal with costs.

H

**[46]** Peguam responden juga membangkitkan bahawa notis tersebut adalah cacat kerana tidak dinyatakan 'Question of Law' secara khusus. Mahkamah juga merujuk kepada kes *Badan Pengurusan Bersama Kompleks Pandan Safari Lagoon v Tam Cheng Meng* yang mana diputuskan bahawa:

I

> [17] Defendant's counsel further submits that as the notice of appeal did not state the questions of law to be decided, the appeal should not be heard by this court. I have to respectfully disagree with learned counsel for the defendant. The Court of Appeal in *Neoh Choo Ee & Co Sdn Bhd v Vasalamany Govindasamy & Anor* [2004] 3 CLJ 321; [2004] 4 AMR 357 held that the notice of appeal does not have to set

the questions of law which the appeal involves. Gopal Sri Ram JCA in delivering the judgment of the Court of Appeal held that if the court was to hold otherwise 'the court would be imposing a condition of appeal that written law does not prescribe'. His Lordship held that s 28(1) of the CJA does not state the notice of appeal should expressly state the questions of law. Neither does O 49 of the Subordinate Courts Rules 1980 or O 55 of the Rules of the High Court 1980. In Neoh Choo Ee, the Court of Appeal disagreed with the High Court judge that a notice of appeal in Form 140 of the SCR should set out the questions of law which the appeal involves. It agreed that points of law will in the usual way be taken in the memorandum of appeal and held that the High Court ought to resort to the memorandum of appeal.

[18] The Court of Appeal in *Neoh Choo Ee* held as 'wrongly decided and should no longer be considered as good law' the decisions of the High Court in *Malayan Banking Bhd v Syed AN Mohsin & Ors* [1992] 2 MLJ 116; [1991] 3 CLJ 2892; [1991] 3 CLJ Rep 236 and *Mohamad Safuan bin Wasidin & Anor v Mohd Ridhuan bin Ahmad (an infant)* [1994] 2 MLJ 187. Both these cases held that the notice of appeal in Form 140 must state at least generally the question or questions of law that the appellant wishes to appeal on.

[19] For these reasons, I find that even if the High Court's interpretation in *Lein Tiam Hock* of s 28 of the CJA is used in this case, this instant appeal would come within the proviso in s 28 of the CJA as it relates to questions of law. *The questions of law in this appeal are stated in the memorandum of appeal.*

[20] Accordingly, the defendant's preliminary objection is disallowed.

**[47]** Dalam kes *Badan Pengurusan Bersama Kompleks Pandan Safari Lagoon v Tam Cheng Meng* adalah jelas bahawa mahkamah menolak kepada bantahan awal kerana terdapat 'Question of Law': dalam memorandum rayuan walaupun tiada di dalam notis rayuan. Mengguna pakai prinsip kes tersebut, dalam kes di hadapan mahkamah ini sekarang, notis rayuan perayu langsung tidak menyatakan apakah persoalan 'Question of Law'. Juga tidak terdapat secara am di dalam memorandum rayuan atau notis rayuan. Tiada langsung.

**[48]** Dalam kes ini secara jelas bahawa rayuan adalah terhadap jumlah RM10,000 yang dibenarkan oleh hakim mahkamah sesyen dan tidak dinyatakan langsung sebab rayuan tersebut. Apa yang dinyatakan ialah rayuan ini difailkan kerana 'tidak berpuas hati'. Ini bukanlah persoalan undang-undang untuk mahkamah ini memberikan kebenaran untuk merayu di bawah s 28 Akta 1964.

**[49]** Mahkamah juga mengambil panduan daripada kes *KC Chan Brothers Development Sdn Bhd v Tan Kon Seng & Ors* [2001] 6 MLJ 636; [2001] 4 CLJ 659, di mana mahkamah memutuskan bahawa:

Thus, based on the above finding, it is clear that the amount in dispute or the value of the subject matter in all the 26 appeals before this court is below RM10,000. *It is also clear that by virtue of ss 27 and 28(1) of the Act, the High Court has no*

> *jurisdiction to hear these appeals except on a question of law. This is a question of jurisdiction which must be complied with strictly. It goes to the very core of the court's power in dealing with the appeal. Non-compliance with the provisions is fatal and would nullify the appeal. It is not a mere irregularity which can be cured by any other existing rules. It is a vital question to be determined and decided by the court at the beginning of the proceeding whether or not the respondent or any other party has raised it.* The fact that the respondent does not raise the issue at the beginning of the proceeding does not mean that the court has the jurisdiction to hear the appeal even though the conditions set under s 28(1) of the Act are not fulfilled. (Penekanan ditambah.)

**[50]** Mahkamah bersetuju bahawa, tidak perlu ada persoalan undang-undang secara khusus, tetapi sekurang-kurangnya dinyatakan secara am sama ada di dalam notis rayuan atau memorandum rayuan. Di dalam kes *Sulaiman bin Mohamad v Malayan Banking Bhd* [1992] 2 MLJ 116 pada ms 119; [1991] 1 LNS 39, dinyatakan

> I am of the view that in the case of an appellant intending to appeal on a question of law, the notice of appeal in Form 140 must state at least in general form the question or questions of law that he wishes to appeal on.

(Sila juga rujuk kes *Tiang Kwong Ee v Ing Kai Hong (S) Sdn Bhd* [2000] 5 MLJ 756; [2000] 1 LNS 227.)

*(iv) Apakah maksud 'persoalan undang-undang'*

**[51]** Mahkamah ini juga mengambil maklum atas isu yang juga sering menjadi pertikaian apakah maksud persoalan undang-undang. Di dalam kes: *Indah Water Konsortium Sdn Bhd v Yong Kon Fatt* [2007] 5 MLJ 250; [2007] 4 CLJ 613, mahkamah memutuskan:

> To sum up, labeling all of these questions as 'questions of law' does not metamorphose what is essentially issues of procedure into 'questions of law' of the cited Act and Regulations within the meaning of s 28(1) of the Act. In this situation I hold that the learned judge had erred in entertaining the appeal as the questions in the respondent notice of appeal were not 'questions of law' within the ambit of s 28(1) of the Act.

**[52]** Di dalam kes *Nor Azman bin Ghadzali v Public Prosecutor* [2013] 1 MLJ 486 mahkamah memutuskan:

> The crucial element of 'question of law' must in our view relates to questions involving the interpretation of relevant and applicable legal principles. It is totally different from questions of fact which require references to facts and evidence and the inferences drawn from facts. In essence questions of law are questions involving legal principles of wide applicability in diverse situations and not confined to any particular facts.

**[53]** Mahkamah juga membuat pemerhatian berkaitan isu sama ada RM10,000 tersebut termasuk faedah. Dalam isu ini mahkamah merujuk kepada kes *Kannaya & Anor v Teh Swee Eng* [1994] 1 MLJ 508; [1994] 3 CLJ 54:

> 'In my view, the words 'the amount in dispute or the value of the subject-matter is ten thousand ringgit or less' in s 28(1) of the Act do not include interest and costs. To interpret otherwise would be to place an unnecessary burden on a plaintiff who will have to decide in the first instance in which court to institute proceedings and further to guess as to when his case would be disposed of and as to its outcome. This is because interest and costs will increase with the protraction of the proceedings at first instance itself and they will only be awarded if the plaintiff is successful in the end'

**[54]** Berpandukan kes tersebut, mahkamah ini bersetuju bahawa jumlah RM10,000 tersebut adalah tidak termasuk faedah yang diberikan oleh mahkamah. la adalah hanya kepada jumlah penghakiman saja.

**[55]** Mahkamah ini merekodkan terima kasih atas penghujahan kedua-dua pihak dengan nas perundangan yang telah dirujuk dalam membantu mahkamah ini untuk membuat keputusan kepada rayuan ini.

KESIMPULAN

**[56]** Setelah meneliti fakta kes dan penghujahan kedua-dua pihak, mahkamah ini memutuskan bahawa rayuan perayu dibatalkan tanpa perintah atas kos.

*Bantahan awal responden dibenarkan; rayuan perayu dibatalkan tanpa perintah atas kos.*

Reported by Dzulqarnain Ab Fatar